

Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 ISO-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 L-03 NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03

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P R 042240Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY SOFIA PRIORITY

INFO AMEMBASSY PRAGUE

USMISSION BERLIN

AMEMBASSY BONN

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E.O. 11652:N/A

TAGS: OCLR, BV, WB

SUBJECT: CIVAIR - BULGARIAN REFUSAL OF PANAM OVERFLIGHT
REQUEST

REF: SOFIA 1746

1. ALTHOUGH JANUARY 11-12 OVERFLIGHTS HAVE BEEN SCRUBBED, EMBASSY SHOULD IN ANY FUTURE INSTANCES SUPPORT U.S. AIRLINE REQUESTS FOR CHARTER OVERFLIGHT PERMISSION. IN DOING SO, EMBASSY SHOULD CALL ATTENTION OF APPROPRIATE GOB OFFICIALS TO FACT THAT OPERATION OF CHARTER FLIGHTS IS PROVIDED FOR UNDER TERMS OF ARTICLE 5 OF CONVENTION ON INTERNATIONAL CIVIL AVIATION (CHICAGO 1944), TO WHICH U.S. AND BULGARIA ARE PARTIES. ARTICLE 5 STATES, INTER ALIA:

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"EACH CONTRACTING STATE AGREES THAT ALL AIRCRAFT OF THE

OTHER CONTRACTING STATES, BEING AIRCRAFT NOT ENGAGED IN SCHEDULED INTERNATIONAL AIR SERVICES, SHALL HAVE THE RIGHT SUBJECT TO THE OBSERVANCE OF THE TERMS OF THIS CONVENTION, TO MAKE FLIGHTS INTO OR IN TRANSIT NON-STOP ACROSS ITS TERRITORY AND TO MAKE STOPS FOR NON-TRAFFIC PURPOSES WITHOUT THE NECESSITY OF OBTAINING PRIOR PERMISSION, AND SUBJECT TO THE RIGHT OF THE STATE FLOWN OVER TO REQUIRE LANDING."

2. WHILE ARTICLE 5 SEEMINGLY WOULD PROHIBIT PRACTICE OF REQUIRING PRIOR APPROVAL FOR OVERFLIGHTS OF NON-SCHEDULED AIRLINES, ARTICLE 11 OF THE CONVENTION HAS BEEN INTERPRETED

BY A NUMBER OF STATES AS MODIFYING ARTICLE 5 BY PERMITTING IMPOSITION OF SUCH A PRACTICE. FYI: THE USG DOES NOT SUBSCRIBE TO THIS INTERPRETATION, BUT DOES NOT PROTEST ITS USE BY OTHER SIGNATORIES. END FYI.

3. SHOULD QUESTION OF BERLIN ARISE IN REGARD FUTURE OVERFLIGHT REQUESTS, EMBASSY SHOULD TAKE THE POSITION THAT QUESTION OF POINT OF ORIGIN OF NON-SCHEDULED FLIGHTS IS EXTRANEIOUS ISSUE, WHICH GOB IN CURRENT INSTANCE CHOSE TO INJECT INTO SITUATION. IN DEPARTMENT'S VIEW, MAIN ISSUE INVOLVES QUESTION OF INTERNATIONAL AVIATION POLICY, SPECIFICALLY GOB OBLIGATIONS AND RESPONSIBILITIES UNDER CHICAGO CONVENTION. WE REALIZE THAT AS PRACTICAL MATTER GOB MIGHT REFUSE TO HONOR ITS OBLIGATIONS, BUT WE BELIEVE THAT IT WOULD BE WORTHWHILE TO MAKE CASE ON POLICY GROUNDS. KISSINGER

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